



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 14, 1997

Mr. J. Robert Giddings
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR97-0357

Dear Mr. Giddings:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103460.

The University of Texas System ("university system") received a request for the following information:

1. All documents, including but not limited to, memos, letters and reports, concerning the subject of post tenure review from September 1, 1993 to the present date, [including] all e-mail transmissions.
2. All departmental level rankings of tenured professors for the 1995-96 academic year at the following component institutions: The University of Texas at Austin; The University of Texas at Dallas. [Specifically,] numerical rankings of professors in each academic department.
3. The current procedures and policies for evaluating the performance of tenured faculty members at The University of Texas at Austin and The University of Texas at Dallas.

You state that the university system will release to the requestor portions of the requested information. However, you assert that the remaining documents are exempted from required public disclosure under sections 552.106 and 552.111 of the Government Code.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111

exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. The exception also protects drafts of a document that has been or will be released in final form and any comments on the draft because they necessarily represent the advice and opinions of the drafter as to the form and content of the final document. *See* Open Records Decision No. 559 (1990). Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

The university system objects to the public release of memos, letters, reports, position papers, draft policies and e-mail communications which contain the advice, opinions, and recommendations of administrative officials, faculty and students on the issue of a proposed policy for the periodic evaluations of tenured faculty. We agree that the requested information contains advice, opinions and recommendations reflecting the university system's policymaking. Accordingly, we have marked those portions of the information that the university system may withhold from required public disclosure based on section 552.111.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/SAB/rho

Ref.: ID# 103460

Enclosures: Marked documents

cc.: Mr. Charles Zucker, Ph.D.0
Texas Faculty Association
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(w/o enclosures)